

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

ALBERT IAN SCHWEITZER,

Plaintiff,

vs.

STATE OF HAWAII, TODD THOMAS,
WARDEN OF SAGUARO CORRECTIONAL
CENTER - ELOY, ARIZONA; AND TED
SAKAI, DIRECTOR OF PUBLIC
SAFETY, STATE OF HAWAI'I;

Defendants.

CIV. NO. 05-00065 LEK-KJM

ORDER LIFTING STAY AND DISMISSING THE SECOND AMENDED PETITION

January 31, 2005, Petitioner Albert Ian Schweitzer ("Schweitzer"), proceeding *pro se*, filed a Petition Under 28 USC § 254 for Writ of Habeas Corpus by a Person in State Custody ("Petition"). [Dkt. no. 1.] On March 9, 2005, Schweitzer filed his Amended Petition. [Dkt. no. 4.] On May 20, 2005, he filed an addenda to the Amended Petition. [Dkt. no. 12.] The Amended Petition and the addenda were construed collectively as Schweitzer's second amended petition ("Second Amended Petition"). See Order to Show Cause and Answer Second Amended Petition, filed 6/16/05 (dkt. no. 14).

On March 13, 2006, this case was stayed to allow Schweitzer, who was represented by counsel at that point, to present the unexhausted claims in the Second Amended Petition to

a state court through a Hawai'i Rules of Penal Procedure Rule 40 petition. See Order Staying Petition, filed 3/13/06 (dkt. no. 37). On January 4, 2007, the case was administratively closed. [Order Directing the Clerk of Court to Administratively Close this Case, filed 1/4/07 (dkt. no. 42).] On January 26, 2017, Schweitzer informed this Court that he filed a Rule 40 petition in state court. See Petitioner Albert Ian Schweitzer's State of Hawaii Rule 40 Petition for Post-Conviction Relief, filed 1/26/17 (dkt. no. 84) (with petition filed in Schweitzer v. State of Hawai'i, Case No. S.P.P. 17-1-0002, on 1/17/17 in the State of Hawai'i Third Circuit Court).

The state court, in a separate proceeding, vacated Schweitzer's conviction and dismissed the criminal case against him. See Schweitzer v. State of Hawai'i, Case No. 3CSP 23-0000003 (Circuit Court of the Third Circuit, Hilo Division, State of Hawai'i), Findings of Fact, Conclusions of Law Granting Petition to Vacate, Set Aside, and Correct Judgment, and to Release Petitioner Albert Ian Schweitzer from Custody, filed 10/20/23 (dkt. no. 117) ("10/20/23 State Court Decision").

On March 20, 2024, this Court issued an entering order informing the parties that it was inclined to dismiss the Second Amended Petition as moot. [Dkt. no. 100.] No objection to this Court's inclination was filed. There being no objection, this Court concludes that Schweitzer's Second Amended Petition is

moot in light of the 10/20/23 State Court Decision. This Court therefore LIFTS the stay and DISMISSES the Second Amended Petition.

This Court DIRECTS the Clerk's Office to close this case on **April 24, 2024** unless a timely motion for reconsideration of this Order is filed.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, April 9, 2024.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

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